

ASSEMBLY BILL

No. 125

Introduced by Assembly Member Dymally

January 13, 2005

An act to amend Sections 11351, 11353.6, 11369, 11370, 11370.2, 11370.4, 11372, 11372.5, 11470, 11470.4, 11488, 11571.1, and 11590 of, and to repeal Section 11351.5 of, the Health and Safety Code, and to amend Sections 629.52, 999e, 1174.4, 1203.07, 1203.073, 6243, and 12022 of the Penal Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

AB 125, as introduced, Dymally. Controlled substances: cocaine penalties.

(1) Existing law provides that every person who possesses for sale or purchases for purposes of sale cocaine base shall be punished by imprisonment in the state prison for a period of 3, 4, or 5 years and that every person who possesses for sale or purchases for purposes of sale cocaine powder shall be punished by imprisonment in the state prison for a period of 2, 3, or 4 years.

This bill would provide that every person who possesses for sale or purchases for purposes of sale either cocaine base or cocaine powder shall be punished by imprisonment in the state prison for 2, 3, or 4 years. The bill would make conforming changes to related provisions.

(2) Existing law generally provides that the interest of any registered owner of a boat, airplane, or any vehicle used as an instrument to facilitate the manufacture of, or possession for sale or sale of, 14.25 grams or more of cocaine base or 28.5 grams or more of cocaine powder is subject to forfeiture, as specified.

This bill would instead provide that the interest of any registered owner of a boat, airplane, or any vehicle used as an instrument to

facilitate the manufacture of, or possession for sale or sale of, 28.5 grams or more of either cocaine base or cocaine powder is subject to forfeiture. The bill would make conforming changes to related provisions.

(3) Existing law provides that, except in unusual cases where the interests of justice would best be served by granting probation, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, a list of convicted felons, including any person convicted of possessing for sale or selling a substance containing 28.5 grams or more of cocaine powder or 57 grams or more of a substance containing cocaine powder; any person convicted of possessing for sale 14.25 grams or more of cocaine base or 57 grams or more of a substance containing at least 5 grams of cocaine base; and any person convicted of transporting or importing for sale, administering, or selling any amount of cocaine base.

This bill would delete from this list of those generally not eligible for probation or suspension of sentence persons convicted of transporting or importing for sale, administering, or selling any amount of cocaine base. The bill would revise the provisions with respect to cocaine to instead provide that generally probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of possessing for sale or selling a substance containing 28.5 grams or more of cocaine powder or cocaine base, or 57 grams or more of a substance containing cocaine powder or cocaine base. By changing the punishment for a crime, the bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares the
2 following:

1 (1) Cocaine hydrochloride (powder cocaine) and cocaine base
2 (crack cocaine) are two forms of the same drug, the effect on the
3 human body of which are so similar that to mete out unequal
4 punishment for the same crime (e.g., possession for sale of a
5 particular form of cocaine), is wholly and cruelly unjust.

6 (2) The current statutory sentencing disparity between cocaine
7 hydrochloride and cocaine base has a disproportionate impact on
8 California's African-Americans, who comprise 6.4 percent of the
9 state's population yet account for two-thirds of those convicted
10 for possession of cocaine base for sale.

11 (3) According to conservative estimates provided by the
12 Attorney General, more than 2,100 California residents were
13 convicted of possession of cocaine base for sale in each of the
14 years of 2000 and 2001. The cost to California taxpayers to
15 incarcerate 2,100 persons for an additional year at thirty thousand
16 nine hundred twenty-nine dollars (\$30,929) per individual is
17 approximately \$65 million.

18 (b) It is the intent of the Legislature in enacting this act to
19 provide that for the purposes of determining appropriate penalties
20 for crimes relating to cocaine hydrochloride and cocaine base,
21 such as the crime of possession, possession for sale, or
22 transportation for sale, cocaine hydrochloride and cocaine base
23 shall be treated in an identical manner.

24 SEC. 2. Section 11351 of the Health and Safety Code is
25 amended to read:

26 11351. Except as otherwise provided in this division, every
27 person who possesses for sale or purchases for purposes of sale
28 (1) any controlled substance specified in subdivision (b), (c), or
29 (e) of Section 11054, specified in paragraph (14), (15), or (20) of
30 subdivision (d) of Section 11054, *specified in paragraph (1) of*
31 *subdivision (f) of Section 11054*, or specified in subdivision (b) or
32 (c) of Section 11055, or specified in subdivision (h) of Section
33 11056, or (2) any controlled substance classified in Schedule III,
34 IV, or V which is a narcotic drug, shall be punished by
35 imprisonment in the state prison for two, three, or four years.

36 SEC. 3. Section 11351.5 of the Health and Safety Code is
37 repealed.

38 ~~11351.5. Except as otherwise provided in this division, every~~
39 ~~person who possesses for sale or purchases for purposes of sale~~
40 ~~cocaine base which is specified in paragraph (1) of subdivision~~

1 ~~(f) of Section 11054, shall be punished by imprisonment in the~~
2 ~~state prison for a period of three, four, or five years.~~

3 SEC. 4. Section 11353.6 of the Health and Safety Code is
4 amended to read:

5 11353.6. (a) This section shall be known, and may be cited,
6 as the Juvenile Drug Trafficking and Schoolyard Act of 1988.

7 (b) Any person 18 years of age or over who is convicted of a
8 violation of ~~Section 11351.5, 11352, or 11379.6, as those~~
9 ~~sections apply to paragraph (1) of subdivision (f) of Section~~
10 ~~11054, or of Section 11351, 11352, or 11379.6, as those sections~~
11 ~~apply to paragraph (11) of subdivision (c) of Section 11054 or to~~
12 ~~paragraph (1) of subdivision (f) of Section 11054, or of Section~~
13 ~~11378, 11379, or 11379.6, as those sections apply to paragraph~~
14 ~~(2) of subdivision (d) of Section 11055, or of a conspiracy to~~
15 ~~commit one of those offenses, where the violation takes place~~
16 ~~upon the grounds of, or within 1,000 feet of, a public or private~~
17 ~~elementary, vocational, junior high, or high school during hours~~
18 ~~that the school is open for classes or school-related programs, or~~
19 ~~at any time when minors are using the facility where the offense~~
20 ~~occurs, shall receive an additional punishment of 3, 4, or 5 years~~
21 ~~at the court's discretion.~~

22 (c) Any person 18 years of age or older who is convicted of a
23 violation pursuant to subdivision (b) which involves a minor who
24 is at least four years younger than that person, as a full and
25 separately served enhancement to that provided in subdivision
26 (b), shall be punished by imprisonment in the state prison for 3,
27 4, or 5 years at the court's discretion.

28 (d) The additional terms provided in this section shall not be
29 imposed unless the allegation is charged in the accusatory
30 pleading and admitted or found to be true by the trier of fact.

31 (e) The additional terms provided in this section shall be in
32 addition to any other punishment provided by law and shall not
33 be limited by any other provision of law.

34 (f) Notwithstanding any other provision of law, the court may
35 strike the additional punishment for the enhancements provided
36 in this section if it determines that there are circumstances in
37 mitigation of the additional punishment and states on the record
38 its reasons for striking the additional punishment.

39 (g) "Within 1,000 feet of a public or private elementary,
40 vocational, junior high, or high school" means any public area or

1 business establishment where minors are legally permitted to
2 conduct business which is located within 1,000 feet of any public
3 or private elementary, vocational, junior high, or high school.

4 SEC. 5. Section 11369 of the Health and Safety Code is
5 amended to read:

6 11369. When there is reason to believe that any person
7 arrested for a violation of Section 11350, 11351, ~~11351.5~~, 11352,
8 11353, 11355, 11357, 11359, 11360, 11361, 11363, 11366,
9 11368 or 11550, may not be a citizen of the United States, the
10 arresting agency shall notify the appropriate agency of the United
11 States having charge of deportation matters.

12 SEC. 6. Section 11370 of the Health and Safety Code is
13 amended to read:

14 11370. (a) Any person convicted of violating Section 11350,
15 11351, ~~11351.5~~, 11352, 11353, 11355, 11357, 11359, 11360,
16 11361, 11363, 11366, or 11368, or of committing any offense
17 referred to in those sections, shall not, in any case, be granted
18 probation by the trial court or have the execution of the sentence
19 imposed upon him or her suspended by the court, if he or she has
20 been previously convicted of any offense described in
21 subdivision (c).

22 (b) Any person who was 18 years of age or over at the time of
23 the commission of the offense and is convicted for the first time
24 of selling, furnishing, administering, or giving a controlled
25 substance which is (1) specified in subdivision (b), (c), (e), or
26 paragraph (1) of subdivision (f) of Section 11054, specified in
27 paragraph (14), (15), or (20) of subdivision (d) of Section 11054,
28 or specified in subdivision (b) or (c) of Section 11055, or (2)
29 which is a narcotic drug classified in Schedule III, IV, or V, to a
30 minor or inducing a minor to use such a controlled substance in
31 violation of law shall not, in any case, be granted probation by
32 the trial court or have the execution of the sentence imposed
33 upon him or her suspended by the court.

34 (c) Any previous conviction of any of the following offenses,
35 or of an offense under the laws of another state or of the United
36 States which, if committed in this state, would have been
37 punishable as such an offense, shall render a person ineligible for
38 probation or suspension of sentence pursuant to subdivision (a)
39 of this section:

1 (1) Any felony offense described in this division involving a
2 controlled substance specified in subdivision (b), (c), (e), or
3 paragraph (1) of subdivision (f) of Section 11054, specified in
4 paragraph (13), (14), (15), or (20) of subdivision (d) of Section
5 11054, or specified in subdivision (b) or (c) of Section 11055.

6 (2) Any felony offense described in this division involving a
7 narcotic drug classified in Schedule III, IV, or V.

8 (d) The existence of any previous conviction or fact which
9 would make a person ineligible for suspension of sentence or
10 probation under this section shall be alleged in the information or
11 indictment, and either admitted by the defendant in open court, or
12 found to be true by the jury trying the issue of guilt or by the
13 court where guilt is established by a plea of guilty or nolo
14 contendere or by trial by the court sitting without a jury.

15 SEC. 7. Section 11370.2 of the Health and Safety Code is
16 amended to read:

17 11370.2. (a) Any person convicted of a violation of, or of a
18 conspiracy to violate, Section 11351, ~~11351.5~~, or 11352 shall
19 receive, in addition to any other punishment authorized by law,
20 including Section 667.5 of the Penal Code, a full, separate, and
21 consecutive three-year term for each prior felony conviction of,
22 or for each prior felony conviction of conspiracy to violate,
23 Section 11351, ~~11351.5~~, 11352, 11378, 11378.5, 11379, 11379.5,
24 11379.6, 11380, 11380.5, or 11383, whether or not the prior
25 conviction resulted in a term of imprisonment.

26 (b) Any person convicted of a violation of, or of a conspiracy
27 to violate, Section 11378.5, 11379.5, 11379.6, 11380.5, or 11383
28 shall receive, in addition to any other punishment authorized by
29 law, including Section 667.5 of the Penal Code, a full, separate,
30 and consecutive three-year term for each prior felony conviction
31 of, or for each prior felony conviction of conspiracy to violate,
32 Section 11351, ~~11351.5~~, 11352, 11378, 11378.5, 11379, 11379.5,
33 11379.6, 11380, 11380.5, or 11383, whether or not the prior
34 conviction resulted in a term of imprisonment.

35 (c) Any person convicted of a violation of, or of a conspiracy
36 to violate, Section 11378 or 11379 with respect to any substance
37 containing a controlled substance specified in paragraph (1) or
38 (2) of subdivision (d) of Section 11055 shall receive, in addition
39 to any other punishment authorized by law, including Section
40 667.5 of the Penal Code, a full, separate, and consecutive

1 three-year term for each prior felony conviction of, or for each
2 prior felony conviction of conspiracy to violate, Section 11351,
3 ~~11351.5~~, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6,
4 11380, 11380.5, or 11383, whether or not the prior conviction
5 resulted in a term of imprisonment.

6 (d) The enhancements provided for in this section shall be
7 pleaded and proven as provided by law.

8 (e) The conspiracy enhancements provided for in this section
9 shall not be imposed unless the trier of fact finds that the
10 defendant conspirator was substantially involved in the planning,
11 direction, execution, or financing of the underlying offense.

12 (f) Prior convictions from another jurisdiction qualify for use
13 under this section pursuant to Section 668.

14 SEC. 8. Section 11370.4 of the Health and Safety Code is
15 amended to read:

16 11370.4. (a) Any person convicted of a violation of, or of a
17 conspiracy to violate, Section 11351,~~11351.5~~, or 11352 with
18 respect to a substance containing heroin, cocaine base as
19 specified in paragraph (1) of subdivision (f) of Section 11054, or
20 cocaine as specified in paragraph (6) of subdivision (b) of
21 Section 11055 shall receive an additional term as follows:

22 (1) Where the substance exceeds one kilogram by weight, the
23 person shall receive an additional term of three years.

24 (2) Where the substance exceeds four kilograms by weight, the
25 person shall receive an additional term of five years.

26 (3) Where the substance exceeds 10 kilograms by weight, the
27 person shall receive an additional term of 10 years.

28 (4) Where the substance exceeds 20 kilograms by weight, the
29 person shall receive an additional term of 15 years.

30 (5) Where the substance exceeds 40 kilograms by weight, the
31 person shall receive an additional term of 20 years.

32 (6) Where the substance exceeds 80 kilograms by weight, the
33 person shall receive an additional term of 25 years.

34 The conspiracy enhancements provided for in this subdivision
35 shall not be imposed unless the trier of fact finds that the
36 defendant conspirator was substantially involved in the planning,
37 direction, execution, or financing of the underlying offense.

38 (b) Any person convicted of a violation of, or of conspiracy to
39 violate, Section 11378, 11378.5, 11379, or 11379.5 with respect
40 to a substance containing methamphetamine, amphetamine,

1 phencyclidine (PCP) and its analogs shall receive an additional
2 term as follows:

3 (1) Where the substance exceeds one kilogram by weight, or
4 30 liters by liquid volume, the person shall receive an additional
5 term of three years.

6 (2) Where the substance exceeds four kilograms by weight, or
7 100 liters by liquid volume, the person shall receive an additional
8 term of five years.

9 (3) Where the substance exceeds 10 kilograms by weight, or
10 200 liters by liquid volume, the person shall receive an additional
11 term of 10 years.

12 (4) Where the substance exceeds 20 kilograms by weight, or
13 400 liters by liquid volume, the person shall receive an additional
14 term of 15 years.

15 In computing the quantities involved in this subdivision, plant
16 or vegetable material seized shall not be included.

17 The conspiracy enhancements provided for in this subdivision
18 shall not be imposed unless the trier of fact finds that the
19 defendant conspirator was substantially involved in the planning,
20 direction, execution, or financing of the underlying offense.

21 (c) The additional terms provided in this section shall not be
22 imposed unless the allegation that the weight of the substance
23 containing heroin, cocaine base as specified in paragraph (1) of
24 subdivision (f) of Section 11054, cocaine as specified in
25 paragraph (6) of subdivision (b) of Section 11055,
26 methamphetamine, amphetamine, or phencyclidine (PCP) and its
27 analogs exceeds the amounts provided in this section is charged
28 in the accusatory pleading and admitted or found to be true by
29 the trier of fact.

30 (d) The additional terms provided in this section shall be in
31 addition to any other punishment provided by law.

32 (e) Notwithstanding any other provision of law, the court may
33 strike the additional punishment for the enhancements provided
34 in this section if it determines that there are circumstances in
35 mitigation of the additional punishment and states on the record
36 its reasons for striking the additional punishment.

37 SEC. 9. Section 11372 of the Health and Safety Code is
38 amended to read:

39 11372. (a) In addition to the term of imprisonment provided
40 by law for persons convicted of violating Section 11350, 11351,

~~11351.5~~, 11352, 11353, 11355, 11359, 11360, or 11361, the trial court may impose a fine not exceeding twenty thousand dollars (\$20,000) for each offense. In no event shall a fine be levied in lieu of or in substitution for the term of imprisonment provided by law for any of these offenses.

(b) Any person receiving an additional term pursuant to paragraph (1) of subdivision (a) of Section 11370.4, may, in addition, be fined by an amount not exceeding one million dollars (\$1,000,000) for each offense.

(c) Any person receiving an additional term pursuant to paragraph (2) of subdivision (a) of Section 11370.4, may, in addition, be fined by an amount not to exceed four million dollars (\$4,000,000) for each offense.

(d) Any person receiving an additional term pursuant to paragraph (3) of subdivision (a) of Section 11370.4, may, in addition, be fined by an amount not to exceed eight million dollars (\$8,000,000) for each offense.

(e) The court shall make a finding, prior to the imposition of the fines authorized by subdivisions (b) to (e), inclusive, that there is a reasonable expectation that the fine, or a substantial portion thereof, could be collected within a reasonable period of time, taking into consideration the defendant's income, earning capacity, and financial resources.

SEC. 10. Section 11372.5 of the Health and Safety Code is amended to read:

11372.5. (a) Every person who is convicted of a violation of Section 11350, 11351, ~~11351.5~~, 11352, 11355, 11358, 11359, 11361, 11363, 11364, 11368, 11375, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11382, 11383, 11390, 11391, or 11550 or subdivision (a) or (c) of Section 11357, or subdivision (a) of Section 11360 of this code, or Section 4230 of the Business and Professions Code shall pay a criminal laboratory analysis fee in the amount of fifty dollars (\$50) for each separate offense. The court shall increase the total fine necessary to include this increment.

With respect to those offenses specified in this subdivision for which a fine is not authorized by other provisions of law, the court shall, upon conviction, impose a fine in an amount not to exceed fifty dollars (\$50), which shall constitute the increment

1 prescribed by this section and which shall be in addition to any
2 other penalty prescribed by law.

3 (b) The county treasurer shall maintain a criminalistics
4 laboratories fund. The sum of fifty dollars (\$50) shall be
5 deposited into the fund for every conviction under Section
6 11350, 11351, ~~11351.5~~, 11352, 11355, 11358, 11359, 11361,
7 11363, 11364, 11368, 11375, 11377, 11378, 11378.5, 11379,
8 11379.5, 11379.6, 11380, 11380.5, 11382, 11383, 11390, 11391,
9 or 11550, subdivision (a) or (c) of Section 11357, or subdivision
10 (a) of Section 11360 of this code, or Section 4230 of the Business
11 and Professions Code, in addition to fines, forfeitures, and other
12 moneys which are transmitted by the courts to the county
13 treasurer pursuant to Section 11502. The deposits shall be made
14 prior to any transfer pursuant to Section 11502. The county may
15 retain an amount of this money equal to its administrative cost
16 incurred pursuant to this section. Moneys in the criminalistics
17 laboratories fund shall, except as otherwise provided in this
18 section, be used exclusively to fund (1) costs incurred by
19 criminalistics laboratories providing microscopic and chemical
20 analyses for controlled substances, in connection with criminal
21 investigations conducted within both the incorporated or
22 unincorporated portions of the county, (2) the purchase and
23 maintenance of equipment for use by these laboratories in
24 performing the analyses, and (3) for continuing education,
25 training, and scientific development of forensic scientists
26 regularly employed by these laboratories. Moneys in the
27 criminalistics laboratory fund shall be in addition to any
28 allocations pursuant to existing law. As used in this section,
29 “criminalistics laboratory” means a laboratory operated by, or
30 under contract with, a city, county, or other public agency,
31 including a criminalistics laboratory of the Department of Justice,
32 (1) which has not less than one regularly employed forensic
33 scientist engaged in the analysis of solid-dose controlled
34 substances, and (2) which is registered as an analytical laboratory
35 with the Drug Enforcement Administration of the United States
36 Department of Justice for the possession of all scheduled
37 controlled substances. In counties served by criminalistics
38 laboratories of the Department of Justice, amounts deposited in
39 the criminalistics laboratories fund, after deduction of
40 appropriate and reasonable county overhead charges not to

1 exceed 5 percent attributable to the collection thereof, shall be
2 paid by the county treasurer once a month to the Controller for
3 deposit into the State General Fund, and shall be excepted from
4 the expenditure requirements otherwise prescribed by this
5 subdivision.

6 The county treasurer shall, at the conclusion of each fiscal
7 year, determine the amount of any funds remaining in the special
8 fund established pursuant to this section after expenditures for
9 that fiscal year have been made for the purposes herein specified.
10 The county treasurer shall annually distribute those surplus funds
11 in accordance with the allocation scheme for distribution of fines
12 and forfeitures set forth in Section 11502.

13 SEC. 11. Section 11470 of the Health and Safety Code is
14 amended to read:

15 11470. The following are subject to forfeiture:

16 (a) All controlled substances which have been manufactured,
17 distributed, dispensed, or acquired in violation of this division.

18 (b) All raw materials, products, and equipment of any kind
19 which are used, or intended for use, in manufacturing,
20 compounding, processing, delivering, importing, or exporting
21 any controlled substance in violation of this division.

22 (c) All property except real property or a boat, airplane, or any
23 vehicle which is used, or intended for use, as a container for
24 property described in subdivision (a) or (b).

25 (d) All books, records, and research products and materials,
26 including formulas, microfilm, tapes, and data which are used, or
27 intended for use, in violation of this division.

28 (e) The interest of any registered owner of a boat, airplane, or
29 any vehicle other than an implement of husbandry, as defined in
30 Section 36000 of the Vehicle Code, which has been used as an
31 instrument to facilitate the manufacture of, or possession for sale
32 or sale of 14.25 grams or more of heroin or cocaine base as
33 specified in paragraph (1) of subdivision (f) of Section 11054, or
34 a substance containing 14.25 grams or more of heroin or cocaine
35 base as specified in paragraph (1) of subdivision (f) of Section
36 11054, or 14.25 grams or more of a substance containing
37 heroin or cocaine base as specified in paragraph (1) of subdivision
38 (f) of Section 11054, or 28.5 grams or more of Schedule I
39 controlled substances except marijuana, peyote, or psilocybin; 10
40 pounds dry weight or more of marijuana, peyote, or psilocybin;

1 or 28.5 grams or more of cocaine, ~~as specified in paragraph (6) of~~
2 ~~subdivision (b) of Section 11055~~ or cocaine base, or
3 methamphetamine; or a substance containing 28.5 grams or more
4 of cocaine, ~~as specified in paragraph (6) of subdivision (b) of~~
5 ~~Section 11055~~ or cocaine base, or methamphetamine; or 57
6 grams or more of a substance containing cocaine, ~~as specified in~~
7 ~~paragraph (6) of subdivision (b) of Section 11055~~ or cocaine
8 base, or methamphetamine; or 28.5 grams or more of Schedule II
9 controlled substances. No interest in a vehicle which may be
10 lawfully driven on the highway with a class C, class M1, or class
11 M2 license, as prescribed in Section 12804 of the Vehicle Code,
12 may be forfeited under this subdivision if there is a community
13 property interest in the vehicle by a person other than the
14 defendant and the vehicle is the sole class C, class M1, or class
15 M2 vehicle available to the defendant's immediate family.

16 (f) All moneys, negotiable instruments, securities, or other
17 things of value furnished or intended to be furnished by any
18 person in exchange for a controlled substance, all proceeds
19 traceable to such an exchange, and all moneys, negotiable
20 instruments, or securities used or intended to be used to facilitate
21 any violation of Section 11351, ~~11351.5~~, 11352, 11355, 11359,
22 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382,
23 or 11383 of this code, or Section 182 of the Penal Code, or a
24 felony violation of Section 11366.8 of this code, insofar as the
25 offense involves manufacture, sale, possession for sale, offer for
26 sale, or offer to manufacture, or conspiracy to commit at least
27 one of those offenses, if the exchange, violation, or other conduct
28 which is the basis for the forfeiture occurred within five years of
29 the seizure of the property, or the filing of a petition under this
30 chapter, or the issuance of an order of forfeiture of the property,
31 whichever comes first.

32 (g) The real property of any property owner who is convicted
33 of violating Section 11366, 11366.5, or 11366.6 with respect to
34 that property. However, property which is used as a family
35 residence or for other lawful purposes, or which is owned by two
36 or more persons, one of whom had no knowledge of its unlawful
37 use, shall not be subject to forfeiture.

38 (h) Subject to the requirements of Section 11488.5 and except
39 as further limited by this subdivision to protect innocent parties
40 who claim a property interest acquired from a defendant, all

right, title, and interest in any personal property described in this section shall vest in the state upon commission of the act giving rise to forfeiture under this chapter, if the state or local governmental entity proves a violation of Section 11351, ~~11351.5~~, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves the manufacture, sale, possession for sale, offer for sale, offer to manufacture, or conspiracy to commit at least one of those offenses, in accordance with the burden of proof set forth in paragraph (1) of subdivision (i) of Section 11488.4 or, in the case of cash or negotiable instruments in excess of twenty-five thousand dollars (\$25,000), paragraph (4) of subdivision (i) of Section 11488.4.

The operation of the special vesting rule established by this subdivision shall be limited to circumstances where its application will not defeat the claim of any person, including a bona fide purchaser or encumbrancer who, pursuant to Section 11488.5, 11488.6, or 11489, claims an interest in the property seized, notwithstanding that the interest in the property being claimed was acquired from a defendant whose property interest would otherwise have been subject to divestment pursuant to this subdivision.

SEC. 12. Section 11470.4 of the Health and Safety Code is amended to read:

11470.4. The provisions of this chapter apply to any minor who has been found to be a person described in Section 602 of the Welfare and Institutions Code because of a violation of Section 11351, ~~11351.5~~, 11352, 11355, 11366, 11366.5, 11366.6, 11378.5, 11379, 11379.5, 11379.6, or 11382.

SEC. 13. Section 11488 of the Health and Safety Code is amended to read:

11488. (a) Any peace officer of this state, subsequent to making or attempting to make an arrest for a violation of Section 11351, ~~11351.5~~, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11382 of this code, or Section 182 of the Penal Code insofar as the offense involves manufacture, sale, purchase for the purpose of sale, possession for sale or offer to manufacture or sell, or conspiracy to commit one of those

1 offenses, may seize any item subject to forfeiture under
2 subdivisions (a) to (f), inclusive, of Section 11470. The peace
3 officer shall also notify the Franchise Tax Board of a seizure
4 where there is reasonable cause to believe that the value of the
5 seized property exceeds five thousand dollars (\$5,000).

6 (b) Receipts for property seized pursuant to this section shall
7 be delivered to any person out of whose possession such property
8 was seized, in accordance with Section 1412 of the Penal Code.
9 In the event property seized was not seized out of anyone's
10 possession, receipt for the property shall be delivered to the
11 individual in possession of the premises at which the property
12 was seized.

13 (c) There shall be a presumption affecting the burden of proof
14 that the person to whom a receipt for property was issued is the
15 owner thereof. This presumption may, however, be rebutted at
16 the forfeiture hearing specified in Section 11488.5.

17 SEC. 14. Section 11571.1 of the Health and Safety Code is
18 amended to read:

19 11571.1. (a) To effectuate the purposes of this article, the city
20 prosecutor or city attorney may file, in the name of the people, an
21 action for unlawful detainer against any person who is in
22 violation of the nuisance or illegal purpose provisions of
23 subdivision 4 of Section 1161 of the Code of Civil Procedure,
24 with respect to a controlled substance purpose. In filing this
25 action, which shall be based upon an arrest report or on another
26 action or report by a regulatory or law enforcement agency, the
27 city prosecutor or city attorney shall utilize the procedures set
28 forth in Chapter 4 (commencing with Section 1159) of Title 3 of
29 Part 3 of the Code of Civil Procedure, except that in cases filed
30 under this section, the following also shall apply:

31 (1) (A) Prior to filing an action pursuant to this section, the
32 city prosecutor or city attorney shall give 30-calendar days'
33 written notice to the owner, requiring the owner to file an action
34 for the removal of the person who is in violation of the nuisance
35 or illegal purpose provisions of subdivision 4 of Section 1161 of
36 the Code of Civil Procedure with respect to a controlled
37 substance purpose.

38 (B) This notice shall include sufficient documentation
39 establishing a violation of the nuisance or illegal purpose
40 provisions of subdivision 4 of Section 1161 of the Code of Civil

1 Procedure and shall be served upon the owner and the tenant in
2 accordance with subdivision (e) of this section.

3 (C) The notice to the tenant shall also include on the bottom of
4 its front page, in at least 14-point bold type, the following:

5 “Notice to Tenant: This notice is not a notice of eviction.
6 However, you should know that an eviction action may soon be
7 filed in court against you for suspected drug activity, as described
8 above. You should call (insert name and telephone number of the
9 city attorney or prosecutor pursuing the action) or legal aid to
10 stop the eviction action if any of the following is applicable:

- 11 (i) You are not the person named in this notice.
- 12 (ii) The person named in the notice does not live with you.
- 13 (iii) The person named in the notice has permanently moved.
- 14 (iv) You do not know the person named in the notice.
- 15 (v) You have any other legal defense or legal reason to stop
16 the eviction action.

17 A list of legal assistance providers is attached to this notice.
18 Some provide free legal help if you are eligible.”

19 (D) The owner shall, within 30-calendar days of the mailing of
20 the written notice, either provide the city prosecutor or city
21 attorney with all relevant information pertaining to the unlawful
22 detainer case, or provide a written explanation setting forth any
23 safety-related reasons for noncompliance, and an assignment to
24 the city prosecutor or city attorney of the right to bring an
25 unlawful detainer action against the tenant.

26 (E) The assignment shall be on a form provided by the city
27 prosecutor or city attorney and may contain a provision for costs
28 of investigation, discovery, and reasonable attorney’s fees, in an
29 amount not to exceed six hundred dollars (\$600).

30 (F) If the city prosecutor or city attorney accepts the
31 assignment of the right of the owner to bring the unlawful
32 detainer action, the owner shall retain all other rights and duties,
33 including the handling of the tenant’s personal property,
34 following issuance of the writ of possession and its delivery to
35 and execution by the appropriate agency.

36 (2) Upon the failure of the owner to file an action pursuant to
37 this section, or to respond to the city prosecutor or city attorney
38 as provided in paragraph (1), or having filed an action, if the
39 owner fails to prosecute it diligently and in good faith, the city
40 prosecutor or city attorney may file and prosecute the action, and

1 join the owner as a defendant in the action. This action shall have
2 precedence over any similar proceeding thereafter brought by the
3 owner, or to one previously brought by the owner and not
4 prosecuted diligently and in good faith. Service of the summons
5 and complaint upon the defendant owner shall be in accordance
6 with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the
7 Code of Civil Procedure.

8 (3) If a jury or court finds the defendant tenant guilty of
9 unlawful detainer in a case filed pursuant to paragraph (2), the
10 city prosecutor or city attorney may be awarded costs, including
11 the costs of investigation and discovery and reasonable attorney's
12 fees. These costs shall be assessed against the defendant owner,
13 to whom notice was directed pursuant to paragraph (1), and once
14 an abstract of judgment is recorded, it shall constitute a lien on
15 the subject real property.

16 (4) Nothing in this article shall prevent a local governing body
17 from adopting and enforcing laws, consistent with this article
18 relating to drug abatement. Where local laws duplicate or
19 supplement this article, this article shall be construed as
20 providing alternative remedies and not preempting the field.

21 (5) Nothing in this article shall prevent a tenant from receiving
22 relief against a forfeiture of a lease pursuant to Section 1179 of
23 the Code of Civil Procedure.

24 (b) In any proceeding brought under this section, the court
25 may, upon a showing of good cause, issue a partial eviction
26 ordering the removal of any person, including, but not limited to,
27 members of the tenant's household if the court finds that the
28 person has engaged in the activities described in subdivision (a).
29 Persons removed pursuant to this section may be permanently
30 barred from returning to or reentering any portion of the entire
31 premises. The court may further order as an express condition of
32 the tenancy that the remaining tenants shall not give permission
33 to or invite any person who has been removed pursuant to this
34 subdivision to return to or reenter any portion of the entire
35 premises.

36 (c) For the purposes of this section, "controlled substance
37 purpose" means the manufacture, cultivation, importation into
38 the state, transportation, possession, possession for sale, sale,
39 furnishing, administering, or giving away, or providing a place to
40 use or fortification of a place involving, cocaine, phencyclidine,

1 heroin, methamphetamine, or any other controlled substance, in a
2 violation of subdivision (a) of Section 11350, Section 11351,
3 ~~11351.5~~, 11352, or 11359, subdivision (a) of Section 11360, or
4 Section 11366, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5,
5 11379.6, or 11383, if the offense occurs on the subject real
6 property and is documented by the observations of a peace
7 officer.

8 (d) Notwithstanding subdivision (b) of Section 68097.2 of the
9 Government Code, a public entity may waive all or part of the
10 costs incurred in furnishing the testimony of a peace officer in an
11 unlawful detainer action brought pursuant to this section.

12 (e) The notice and documentation described in paragraph (1)
13 of subdivision (a) shall be given in writing and may be given
14 either by personal delivery or by deposit in the United States mail
15 in a sealed envelope, postage prepaid, addressed to the owner at
16 the address known to the public entity giving the notice, or as
17 shown on the last equalized assessment roll, if not known.
18 Separate notice of not less than 30-calendar days and
19 documentation shall be provided to the tenant in accordance with
20 this subdivision. Service by mail shall be deemed to be
21 completed at the time of deposit in the United States mail. Proof
22 of giving the notice may be made by a declaration signed under
23 penalty of perjury by any employee of the public entity which
24 shows service in conformity with this section.

25 (f) This section shall only apply to the following courts:

26 (1) In the County of Los Angeles, any court having
27 jurisdiction over unlawful detainer cases involving real property
28 situated in the City of Los Angeles or in the City of Long Beach.

29 (2) In the County of San Diego, any court having jurisdiction
30 over unlawful detainer cases involving real property situated in
31 the City of San Diego.

32 (3) In the County of Alameda, any court with jurisdiction over
33 unlawful detainer cases involving real property situated in the
34 City of Oakland.

35 (g) (1) The city attorney and city prosecutor of each
36 participating jurisdiction shall provide to the Judicial Council the
37 following information:

38 (A) The number of notices provided pursuant to paragraph (1)
39 of subdivision (a).

40 (B) The number of cases filed by an owner, upon notice.

- 1 (C) The number of assignments executed by owners to the city
2 attorney or city prosecutor.
- 3 (D) The number of three-day, 30-day, or 60-day notices issued
4 by the city attorney or city prosecutor.
- 5 (E) The number of cases filed by the city attorney or city
6 prosecutor.
- 7 (F) The number of times that an owner is joined as a defendant
8 pursuant to this section.
- 9 (G) As to each case filed by an owner, the city attorney, or the
10 city prosecutor, the following information:
- 11 (i) The number of judgments ordering an eviction or partial
12 eviction (specify whether default, stipulated, or following trial).
- 13 (ii) The number of cases, listed by separate categories, in
14 which the case was withdrawn or in which the tenant prevailed.
- 15 (iii) The number of other dispositions (specify disposition).
- 16 (iv) The number of defendants represented by counsel.
- 17 (v) Whether the case was a trial by the court or a trial by a
18 jury.
- 19 (vi) Whether an appeal was taken, and, if so, the result of the
20 appeal.
- 21 ~~(vi)~~—
- 22 (vii) The number of cases in which partial eviction was
23 requested, and the number of cases in which the court ordered a
24 partial eviction.
- 25 (H) As to each case in which a notice was issued, but no case
26 was filed, the following information:
- 27 (i) The number of instances in which a tenant voluntarily
28 vacated the unit.
- 29 (ii) The number of instances in which a tenant vacated a unit
30 prior to the providing of the notice.
- 31 (iii) The number of cases in which the notice provided
32 pursuant to subdivision (a) was erroneously sent to the tenant.
33 (List reasons, if known, for the erroneously sent notice, such as
34 reliance on information on the suspected controlled substance
35 law violator's name or address that was incorrect; clerical error;
36 or any other reason)
- 37 (iv) The number of other resolutions (specify resolution).
- 38 (2) (A) Information compiled pursuant to this section shall be
39 reported annually to the Judicial Council on or before January 30
40 of each year.

1 (B) The Judicial Council shall thereafter submit a brief report
2 to the Senate and Assembly Judiciary Committees once on or
3 before April 15, 2007, and once on or before April 15, 2009,
4 summarizing the information collected pursuant to this section
5 and evaluating the merits of the pilot programs established by
6 this section.

7 (h) This section shall remain in effect only until January 1,
8 2010, and as of that date is repealed unless a later enacted statute
9 deletes or extends that date.

10 SEC. 15. Section 11590 of the Health and Safety Code, as
11 amended by Section 2 of Chapter 1417 of the Statutes of 1990, is
12 amended to read:

13 11590. (a) Except as provided in subdivisions (c) and (d), any
14 person who is convicted in the State of California of any offense
15 defined in Section 11350, 11351, ~~11351.5~~, 11352, 11353,
16 11353.5, 11353.7, 11354, 11355, 11357, 11358, 11359, 11360,
17 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11378, 11378.5,
18 11379, 11379.5, 11379.6, 11380, 11380.5, 11383, or 11550, or
19 subdivision (a) of Section 11377, or any person who is
20 discharged or paroled from a penal institution where he or she
21 was confined because of the commission of any such offense, or
22 any person who is convicted in any other state of any offense
23 which, if committed or attempted in this state, would have been
24 punishable as one or more of the above-mentioned offenses, shall
25 within 30 days of his or her coming into any county or city, or
26 city and county in which he or she resides or is temporarily
27 domiciled for that length of time, register with the chief of police
28 of the city in which he or she resides or the sheriff of the county
29 if he or she resides in an unincorporated area.

30 For persons convicted of an offense defined in Section 11377,
31 11378, 11379, or 11380, this subdivision shall apply only to
32 offenses involving controlled substances specified in paragraph
33 (12) of subdivision (d) of Section 11054 and paragraph (2) of
34 subdivision (d) of Section 11055, and to analogs of these
35 substances, as defined in Section 11401. For persons convicted of
36 an offense defined in Section 11379 or 11379.5, this subdivision
37 shall not apply if the conviction was for transporting, offering to
38 transport, or attempting to transport a controlled substance.

39 (b) Any person who is convicted in any federal court of any
40 offense which, if committed or attempted in this state would have

1 been punishable as one or more of the offenses enumerated in
2 subdivision (a) shall within 30 days of his or her coming into any
3 county or city, or city and county in which he or she resides or is
4 temporarily domiciled for that length of time, register with the
5 chief of police of the city in which he or she resides or the sheriff
6 of the county if he or she resides in an unincorporated area.

7 (c) This section does not apply to a conviction of a
8 misdemeanor under Section 11357, 11360, or 11377.

9 (d) The registration requirements imposed by this section for
10 the conviction of offenses defined in Section 11353.7, 11366.5,
11 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6,
12 11380, 11380.5, or 11383, shall apply to any person who
13 commits any of those offenses on and after January 1, 1990.

14 SEC. 16. Section 11590 of the Health and Safety Code, as
15 amended by Section 1 of Chapter 714 of the Statutes of 1995, is
16 amended to read:

17 11590. (a) Except as provided in subdivisions (c) and (d), any
18 person who is convicted in the State of California of any offense
19 defined in Section 11350, 11351, ~~11351.5~~, 11352, 11353,
20 11353.5, 11353.7, 11354, 11355, 11357, 11358, 11359, 11360,
21 11361, 11363, 11366, 11366.5, 11366.6, 11368, 11370.1, 11378,
22 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, 11383, or
23 11550, or subdivision (a) of Section 11377, or any person who is
24 discharged or paroled from a penal institution where he or she
25 was confined because of the commission of any such offense, or
26 any person who is convicted in any other state of any offense
27 which, if committed or attempted in this state, would have been
28 punishable as one or more of the above-mentioned offenses, shall
29 within 30 days of his or her coming into any county or city, or
30 city and county in which he or she resides or is temporarily
31 domiciled for that length of time, register with the chief of police
32 of the city in which he or she resides or the sheriff of the county
33 if he or she resides in an unincorporated area.

34 For persons convicted of an offense defined in Section 11377,
35 11378, 11379, or 11380, this subdivision shall apply only to
36 offenses involving controlled substances specified in paragraph
37 (12) of subdivision (d) of Section 11054 and paragraph (2) of
38 subdivision (d) of Section 11055, and to analogs of these
39 substances, as defined in Section 11401. For persons convicted of
40 an offense defined in Section 11379 or 11379.5, this subdivision

1 shall not apply if the conviction was for transporting, offering to
2 transport, or attempting to transport a controlled substance.

3 (b) Any person who is convicted in any federal court of any
4 offense which, if committed or attempted in this state would have
5 been punishable as one or more of the offenses enumerated in
6 subdivision (a) shall, within 30 days of his or her coming into
7 any county or city, or city and county, in which he or she resides
8 or is temporarily domiciled for that length of time, register with
9 the chief of police of the city in which he or she resides or the
10 sheriff of the county if he or she resides in an unincorporated
11 area.

12 (c) This section does not apply to a conviction of a
13 misdemeanor under Section 11357, 11360, or 11377.

14 (d) The registration requirements imposed by this section for
15 the conviction of offenses defined in Section 11353.7, 11366.5,
16 11366.6, 11370.1, 11377, 11378, 11378.5, 11379, 11379.5,
17 11379.6, 11380, 11380.5, or 11383, shall apply to any person
18 who commits any of those offenses on and after January 1, 1990.

19 SEC. 17. Section 629.52 of the Penal Code is amended to
20 read:

21 629.52. Upon application made under Section 629.50, the
22 judge may enter an ex parte order, as requested or modified,
23 authorizing interception of wire, electronic pager, or electronic
24 cellular telephone communications initially intercepted within
25 the territorial jurisdiction of the court in which the judge is
26 sitting, if the judge determines, on the basis of the facts submitted
27 by the applicant, all of the following:

28 (a) There is probable cause to believe that an individual is
29 committing, has committed, or is about to commit, one of the
30 following offenses:

31 (1) Importation, possession for sale, transportation,
32 manufacture, or sale of controlled substances in violation of
33 Section 11351, ~~11351.5~~, 11352, 11370.6, 11378, 11378.5, 11379,
34 11379.5, or 11379.6 of the Health and Safety Code with respect
35 to a substance containing heroin, cocaine, PCP,
36 methamphetamine, or their precursors or analogs where the
37 substance exceeds 10 gallons by liquid volume or three pounds
38 of solid substance by weight.

39 (2) Murder, solicitation to commit murder, the commission of
40 a felony involving a destructive device in violation of Section

1 12303, 12303.1, 12303.2, 12303.3, 12303.6, 12308, 12309,
2 12310, or 12312, or a violation of Section 209.

3 (3) Any felony violation of Section 186.22.

4 (4) Any felony violation of Section 11418, relating to weapons
5 of mass destruction, Section 11418.5, relating to threats to use
6 weapons of mass destruction, or Section 11419, relating to
7 restricted biological agents.

8 (5) An attempt or conspiracy to commit any of the
9 above-mentioned crimes.

10 (b) There is probable cause to believe that particular
11 communications concerning the illegal activities will be obtained
12 through that interception, including, but not limited to,
13 communications that may be utilized for locating or rescuing a
14 kidnap victim.

15 (c) There is probable cause to believe that the facilities from
16 which, or the place where, the wire, electronic pager, or
17 electronic cellular telephone communications are to be
18 intercepted are being used, or are about to be used, in connection
19 with the commission of the offense, or are leased to, listed in the
20 name of, or commonly used by the person whose
21 communications are to be intercepted.

22 (d) Normal investigative procedures have been tried and have
23 failed or reasonably appear either to be unlikely to succeed if
24 tried or to be too dangerous.

25 SEC. 18. Section 999e of the Penal Code is amended to read:

26 999e. (a) An individual who is under arrest for the
27 commission or attempted commission of one or more of the
28 felonies listed in paragraph (1) and who is either being
29 prosecuted for three or more separate offenses not arising out of
30 the same transaction involving one or more of those felonies, or
31 has been convicted during the preceding 10 years for any felony
32 listed in paragraph (2) of this subdivision, or at least two
33 convictions during the preceding 10 years for any felony listed in
34 paragraph (3) of this subdivision shall be the subject of career
35 criminal prosecution efforts.

36 (1) Murder, manslaughter, rape, sexual assault, child
37 molestation, robbery, carjacking, burglary, arson, receiving
38 stolen property, grand theft, grand theft auto, lewd and lascivious
39 conduct upon a child, assault with a firearm, discharging a
40 firearm into an inhabited structure or vehicle, owning,

1 possessing, or having custody or control of a firearm, as specified
2 in subdivision (a) or (b) of Section 12021, or any unlawful act
3 relating to controlled substances in violation of Sections 11351,
4 ~~11351.5~~, 11352, or 11378 of the Health and Safety Code.

5 (2) Robbery of the first degree, carjacking, burglary of the first
6 degree, arson as defined in Section 451, unlawfully causing a fire
7 as defined in Section 452, forcible rape, sodomy or oral
8 copulation committed with force, lewd or lascivious conduct
9 committed upon a child, kidnapping as defined in Section 209 or
10 209.5, murder, or manslaughter.

11 (3) Grand theft, grand theft auto, receiving stolen property,
12 robbery of the second degree, burglary of the second degree,
13 kidnapping as defined in Section 207, assault with a deadly
14 weapon or instrument, or any unlawful act relating to controlled
15 substances in violation of Section 11351 or 11352 of the Health
16 and Safety Code.

17 For purposes of this chapter, the 10-year periods specified in
18 this section shall be exclusive of any time which the arrested
19 person has served in state prison.

20 (b) In applying the career criminal selection criteria set forth
21 above, a district attorney may elect to limit career criminal
22 prosecution efforts to persons arrested for any one or more of the
23 felonies listed in subdivision (a) of this section if crime statistics
24 demonstrate that the incidence of one or more of these felonies
25 presents a particularly serious problem in the county.

26 (c) In exercising the prosecutorial discretion granted by
27 Section 999g, the district attorney shall consider the character,
28 background, and prior criminal background of the defendant, and
29 the number and the seriousness of the offenses currently charged
30 against the defendant.

31 SEC. 19. Section 1174.4 of the Penal Code is amended to
32 read:

33 1174.4. (a) Persons eligible for participation in this
34 alternative sentencing program shall meet all of the following
35 criteria:

36 (1) Pregnant women with an established history of substance
37 abuse, or pregnant or parenting women with an established
38 history of substance abuse who have one or more children under
39 six years old at the time of entry into the program. For women

1 with children, at least one eligible child shall reside with the
2 mother in the facility.

3 (2) Never served a prior prison term for, nor been convicted in
4 the present proceeding of, committing or attempting to commit,
5 any of the following offenses:

6 (A) Murder or voluntary manslaughter.

7 (B) Mayhem.

8 (C) Rape.

9 (D) Kidnapping.

10 (E) Sodomy by force, violence, duress, menace, or fear of
11 immediate and unlawful bodily injury on the victim or another
12 person.

13 (F) Oral copulation by force, violence, duress, menace, or fear
14 of immediate and unlawful bodily injury on the victim or another
15 person.

16 (G) Lewd acts on a child under 14 years of age, as defined in
17 Section 288.

18 (H) Any felony punishable by death or imprisonment in the
19 state prison for life.

20 (I) Any felony in which the defendant inflicts great bodily
21 injury on any person, other than an accomplice, that has been
22 charged and proved as provided for in Section 12022.53,
23 12022.7, or 12022.9, or any felony in which the defendant uses a
24 firearm, as provided in Section 12022.5, 12022.53, or 12022.55,
25 in which the use has been charged and proved.

26 (J) Robbery.

27 (K) Any robbery perpetrated in an inhabited dwelling house or
28 trailer coach as defined in the Vehicle Code, or in the inhabited
29 portion of any other building, wherein it is charged and proved
30 that the defendant personally used a deadly or dangerous
31 weapon, as provided in subdivision (b) of Section 12022, in the
32 commission of that robbery.

33 (L) Arson in violation of subdivision (a) of Section 451.

34 (M) Sexual penetration in violation of subdivision (a) of
35 Section 289 if the act is accomplished against the victim's will by
36 force, violence, duress, menace, or fear of immediate and
37 unlawful bodily injury on the victim or another person.

38 (N) Rape or sexual penetration in concert, in violation of
39 Section 264.1.

1 (O) Continual sexual abuse of a child in violation of Section
2 288.5.

3 (P) Assault with intent to commit mayhem, rape, sodomy, oral
4 copulation, rape in concert with another, lascivious acts upon a
5 child, or sexual penetration.

6 (Q) Assault with a deadly weapon or with force likely to
7 produce great bodily injury in violation of subdivision (a) of
8 Section 245.

9 (R) Any violent felony defined in Section 667.5.

10 (S) A violation of Section 12022.

11 (T) A violation of Section 12308.

12 (U) Burglary of the first degree.

13 (V) A violation of Section 11351, ~~11351.5~~, 11352, 11353,
14 11358, 11359, 11360, 11370.1, 11370.6, 11378, 11378.5, 11379,
15 11379.5, 11379.6, 11380, or 11383 of the Health and Safety
16 Code.

17 (3) Has not been sentenced to state prison for a term exceeding
18 36 months.

19 (b) Prior to sentencing, if the court proposes to give
20 consideration to a placement, the court shall consider a written
21 evaluation by the probation department, which shall include the
22 following:

23 (1) Whether the defendant is eligible for participation pursuant
24 to this section.

25 (2) Whether participation by the defendant and her eligible
26 children is deemed to be in the best interests of the children.

27 (3) Whether the defendant is amenable to treatment for
28 substance abuse and would benefit from participation in the
29 program.

30 (4) Whether the program is deemed to be in the best interests
31 of an eligible child of the defendant, as determined by a
32 representative of the appropriate child welfare services agency of
33 the county if the child is a dependent child of the juvenile court
34 pursuant to Section 300 of the Welfare and Institutions Code.

35 (c) The district attorney shall make a recommendation to the
36 court as to whether or not the defendant would benefit from the
37 program, which the court shall consider in making its decision. If
38 the court's decision is without the concurrence of the district
39 attorney, the court shall specify its reasons in writing and enter
40 them into the record.

1 (d) If the court determines that the defendant may benefit from
2 participation in this program, the court may impose a state prison
3 sentence with the recommendation that the defendant participate
4 in the program pursuant to this chapter. The court shall notify the
5 department within 48 hours of imposition of this sentence.

6 (e) The Director of Corrections shall consider the court's
7 recommendation in making a determination on the inmate's
8 placement in the program.

9 (f) Women accepted for the program by the Director of
10 Corrections shall be delivered by the county, pursuant to Section
11 1202a, to the facility selected by the department. Before the
12 director accepts a woman for the program, the county shall
13 provide to the director the necessary information to determine her
14 eligibility and appropriate placement status. Priority for services
15 and aftercare shall be given to inmates who are incarcerated in a
16 county, or adjacent to a county, in which a program facility is
17 located.

18 (g) Prior to being admitted to the program, each participant
19 shall voluntarily sign an agreement specifying the terms and
20 conditions of participation in the program.

21 (h) The department may refer inmates back to the sentencing
22 court if the department determines that an eligible inmate has not
23 been recommended for the program. The department shall refer
24 the inmate to the court by an evaluative report so stating the
25 department's assessment of eligibility, and requesting a
26 recommendation by the court.

27 (i) Women who successfully complete the program, including
28 the minimum of one year of transition services under intensive
29 parole supervision, shall be discharged from parole. Women who
30 do not successfully complete the program shall be returned to the
31 state prison where they shall serve their original sentences. These
32 persons shall receive full credit against their original sentences
33 for the time served in the program, pursuant to Section 2933.

34 SEC. 20. Section 1203.07 of the Penal Code is amended to
35 read:

36 1203.07. (a) Notwithstanding Section 1203, probation shall
37 not be granted to, nor shall the execution or imposition of
38 sentence be suspended for, any of the following persons:

1 (1) Any person who is convicted of violating Section 11351 of
2 the Health and Safety Code by possessing for sale 14.25 grams or
3 more of a substance containing heroin.

4 (2) Any person who is convicted of violating Section 11352 of
5 the Health and Safety Code by selling or offering to sell 14.25
6 grams or more of a substance containing heroin.

7 (3) Any person convicted of violating Section 11351 of the
8 Health and Safety Code by possessing heroin for sale or
9 convicted of violating Section 11352 of the Health and Safety
10 Code by selling or offering to sell heroin, and who has one or
11 more prior convictions for violating Section 11351 or Section
12 11352 of the Health and Safety Code.

13 (4) Any person who is convicted of violating Section 11378.5
14 of the Health and Safety Code by possessing for sale 14.25 grams
15 or more of any salt or solution of phencyclidine or any of its
16 analogs as specified in paragraph (21), (22), or (23) of
17 subdivision (d) of Section 11054 or in paragraph (3) of
18 subdivision (e) of Section 11055 of the Health and Safety Code,
19 or any of the precursors of phencyclidine as specified in
20 paragraph (2) of subdivision (f) of Section 11055 of the Health
21 and Safety Code.

22 (5) Any person who is convicted of violating Section 11379.5
23 of the Health and Safety Code by transporting for sale, importing
24 for sale, or administering, or offering to transport for sale, import
25 for sale, or administer, or by attempting to import for sale or
26 transport for sale, phencyclidine or any of its analogs or
27 precursors.

28 (6) Any person who is convicted of violating Section 11379.5
29 of the Health and Safety Code by selling or offering to sell
30 phencyclidine or any of its analogs or precursors.

31 (7) Any person who is convicted of violating Section 11379.6
32 of the Health and Safety Code by manufacturing or offering to
33 perform an act involving the manufacture of phencyclidine or
34 any of its analogs or precursors.

35 As used in this section “manufacture” refers to the act of any
36 person who manufactures, compounds, converts, produces,
37 derives, processes, or prepares, either directly or indirectly by
38 chemical extraction or independently by means of chemical
39 synthesis.

(8) Any person who is convicted of violating Section 11380 of the Health and Safety Code by using, soliciting, inducing, encouraging, or intimidating a minor to act as an agent to manufacture, compound, or sell any controlled substance specified in subdivision (d) of Section 11054 of the Health and Safety Code, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), or specified in subdivision (d), (e), or (f) of Section 11055 of the Health and Safety Code, except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f).

(9) Any person who is convicted of violating Section 11380.5 of the Health and Safety Code by the use of a minor as an agent or who solicits, induces, encourages, or intimidates a minor with the intent that the minor shall violate the provisions of Section 11378.5, 11379.5, or 11379.6 of the Health and Safety Code insofar as the violation relates to phencyclidine or any of its analogs or precursors.

(10) Any person who is convicted of violating subdivision (b) of Section 11383 of the Health and Safety Code by possessing piperidine, pyrrolidine, or morpholine, and cyclohexanone, with intent to manufacture phencyclidine or any of its analogs.

(11) Any person convicted of violating Section 11351, ~~11351.5~~, or 11378 of the Health and Safety Code by possessing for sale cocaine base, cocaine, or methamphetamine, or convicted of violating Section 11352 or 11379 of the Health and Safety Code, by selling or offering to sell cocaine base, cocaine, or methamphetamine and who has one or more convictions for violating Section 11351, ~~11351.5~~, 11352, 11378, 11378.5, 11379, or 11379.5 of the Health and Safety Code. For purposes of prior convictions under Sections 11352, 11379, and 11379.5 of the Health and Safety Code, this subdivision shall not apply to the transportation, offering to transport, or attempting to transport a controlled substance.

(b) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

1 SEC. 21. Section 1203.073 of the Penal Code is amended to
2 read:

3 1203.073. (a) A person convicted of a felony specified in
4 subdivision (b) may be granted probation only in an unusual case
5 where the interests of justice would best be served. When
6 probation is granted in such a case, the court shall specify on the
7 record and shall enter in the minutes the circumstances indicating
8 that the interests of justice would best be served by such a
9 disposition.

10 (b) Except as provided in subdivision (a), probation shall not
11 be granted to, nor shall the execution or imposition of sentence
12 be suspended for, any of the following persons:

13 (1) Any person who is convicted of violating Section 11351 of
14 the Health and Safety Code by possessing for sale, or Section
15 11352 of the Health and Safety Code by selling, a substance
16 containing 28.5 grams or more of cocaine ~~as specified in~~
17 ~~paragraph (6) of subdivision (b) of Section 11055 of the Health~~
18 ~~and Safety Code~~ or cocaine base, or 57 grams or more of a
19 substance containing cocaine ~~as specified in paragraph (6) of~~
20 ~~subdivision (b) of Section 11055 of the Health and Safety Code~~
21 or cocaine base.

22 (2) Any person who is convicted of violating Section 11378 of
23 the Health and Safety Code by possessing for sale, or Section
24 11379 of the Health and Safety Code by selling a substance
25 containing 28.5 grams or more of methamphetamine or 57 grams
26 or more of a substance containing methamphetamine.

27 (3) Any person who is convicted of violating subdivision (a)
28 of Section 11379.6 of the Health and Safety Code, except those
29 who manufacture phencyclidine, or who is convicted of an act
30 which is punishable under subdivision (b) of Section 11379.6 of
31 the Health and Safety Code, except those who offer to perform
32 an act which aids in the manufacture of phencyclidine.

33 (4) Except as otherwise provided in Section 1203.07, any
34 person who is convicted of violating Section 11353 or 11380 of
35 the Health and Safety Code by using, soliciting, inducing,
36 encouraging, or intimidating a minor to manufacture, compound,
37 or sell heroin, cocaine base as specified in paragraph (1) of
38 subdivision (f) of Section 11054 of the Health and Safety Code,
39 cocaine as specified in paragraph (6) of subdivision (b) of

1 Section 11055 of the Health and Safety Code, or
2 methamphetamine.

3 ~~(5) Any person who is convicted of violating Section 11351.5~~
4 ~~of the Health and Safety Code by possessing for sale a substance~~
5 ~~containing 14.25 grams or more of cocaine base as specified in~~
6 ~~paragraph (1) of subdivision (f) of Section 11054 of the Health~~
7 ~~and Safety Code or 57 grams or more of a substance containing~~
8 ~~at least five grams of cocaine base as specified in paragraph (1)~~
9 ~~of subdivision (f) of Section 11054 of the Health and Safety~~
10 ~~Code.~~

11 ~~(6) Any person who is convicted of violating Section 11352 of~~
12 ~~the Health and Safety Code by transporting for sale, importing~~
13 ~~for sale, or administering, or by offering to transport for sale,~~
14 ~~import for sale, or administer, or by attempting to import for sale~~
15 ~~or transport for sale, cocaine base as specified in paragraph (1) of~~
16 ~~subdivision (f) of Section 11054 of the Health and Safety Code.~~

17 ~~(7) Any person who is convicted of violating Section 11352 of~~
18 ~~the Health and Safety Code by selling or offering to sell cocaine~~
19 ~~base as specified in paragraph (1) of subdivision (f) of Section~~
20 ~~11054 of the Health and Safety Code.~~

21 ~~(8)–~~

22 (5) Any person convicted of violating Section 11379.6, 11382,
23 or 11383 of the Health and Safety Code with respect to
24 methamphetamine, if he or she has one or more prior convictions
25 for a violation of Section 11378, 11379, 11379.6, 11380, 11382,
26 or 11383 with respect to methamphetamine.

27 (c) As used in this section, the term “manufacture” refers to
28 the act of any person who manufactures, compounds, converts,
29 produces, derives, processes, or prepares, either directly or
30 indirectly by chemical extraction or independently by means of
31 chemical synthesis.

32 (d) The existence of any previous conviction or fact which
33 would make a person ineligible for probation under this section
34 shall be alleged in the information or indictment, and either
35 admitted by the defendant in open court, or found to be true by
36 the jury trying the issue of guilt or by the court where guilt is
37 established by a plea of guilty or nolo contendere or by trial by
38 the court sitting without a jury.

39 SEC. 22. Section 6243 of the Penal Code is amended to read:

6243. Primary offender groups to be dealt with in the programs established by this chapter shall be probation or parole violators who would otherwise be returned to jail or prison.

The following standards for selection shall apply:

(a) The Director of Corrections, or his or her designee, together with local parole officials, shall select offenders committed to state prison for placement in not less than 50 percent of the program beds established by this chapter. Eligible offenders shall be parole violators and felons committed to state prison who, after credit deduction for presentence incarceration and pursuant to Section 2933, would otherwise have served an actual term of six months or less in state prison. Offenders selected shall have a demonstrated history of alcohol or controlled substances abuse, or both, but shall not include any of the following:

(1) Offenders convicted at anytime of a violent felony, as defined in subdivision (c) of Section 667.5 whether in California or any other jurisdiction for an offense with the same elements.

(2) Offenders who have lost work credits while currently in prison for an offense listed in paragraph (1) of subdivision (a) of Section 2932, except for assault with a deadly weapon or a caustic substance.

(3) Offenders currently convicted of burglary of an inhabited dwelling.

(4) Offenders convicted on two or more separate occasions of violations of Section 11351, ~~11351.5~~, 11352, 11353, 11370.1, 11370.6, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code for selling or transporting for sale, manufacturing for sale, processing for sale, importing for sale, or administering any controlled substance listed in these sections, or for attempting to commit any of these offenses for those purposes and who has served at least one term in prison for violating one of these sections.

(b) The maximum period of participation in a center program shall not exceed the maximum period for which the offender could have been incarcerated in county jail or state prison. Upon release from a center, a state offender shall be subject to the parole provisions of Section 3000. Local offenders shall be subject to all conditions of probation, if probation was imposed at the time of sentencing.

1 (c) The parole of an offender placed in a center following
2 revocation of parole shall remain revoked during the period of
3 participation in a center.

4 (d) Individuals eligible for this program who are deemed unfit
5 for participation by either custodial or program staff at any time
6 shall be transferred to a state prison or county facility to which
7 they would otherwise have been committed and shall serve their
8 remaining sentence minus the time served at the center.

9 (e) Except upon agreement between the county and the
10 department, placement of state offenders in a center is limited to
11 parolees on parole in that county and new commitments
12 sentenced from that county.

13 (f) The county shall select local offenders for placement in up
14 to 50 percent of the program beds established by this chapter.
15 These offenders shall be persons convicted and sentenced to
16 county jail, whether or not as a condition of probation, and who
17 have a demonstrated history of abuse of alcohol or controlled
18 substances, or both.

19 (g) State prisoners participating in these programs shall be
20 eligible for work credit time reductions under provisions
21 applicable to state prisoners committed to state prison.

22 (h) Primary emphasis in this program shall be toward parole
23 violators and persons sentenced to prison or jail for short terms
24 and for whom rehabilitation efforts should be provided.

25 (i) The department shall regularly notify the sheriff's
26 department and the probation department of a participating
27 county of offenders placed into the program or released from the
28 program established by this chapter. The county shall likewise
29 regularly notify local parole officials of persons placed into or
30 released from its programs set up by this chapter.

31 The sheriff's department, probation and parole officials, and
32 the Board of Prison Terms shall be permitted to recommend for
33 or against placement of persons into these programs, as shall the
34 judiciary of the county.

35 (j) Facilities may not serve as housing or parole or probation
36 offices for offenders not a part of programs set up by this chapter.

37 SEC. 23. Section 12022 of the Penal Code is amended to
38 read:

39 12022. (a) (1) Except as provided in subdivisions (c) and (d),
40 any person who is armed with a firearm in the commission of a

felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for one year, unless the arming is an element of that offense. This additional term shall apply to any person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, or a .50 BMG rifle, as defined in Section 12278, the additional and consecutive term described in this subdivision shall be three years whether or not the arming is an element of the offense of which the person was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with an assault weapon or machinegun, or a .50 BMG rifle, whether or not the person is personally armed with an assault weapon or machinegun, or a .50 BMG rifle.

(b) (1) Any person who personally uses a deadly or dangerous weapon in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for one year, unless use of a deadly or dangerous weapon is an element of that offense.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be one, two, or three years.

(3) When a person is found to have personally used a deadly or dangerous weapon in the commission of a felony or attempted felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission of a violation or attempted violation of Section 11351, ~~11351.5~~, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall

1 be punished by an additional and consecutive term of
2 imprisonment in the state prison for three, four, or five years.

3 (d) Notwithstanding the enhancement set forth in subdivision
4 (a), any person who is not personally armed with a firearm who,
5 knowing that another principal is personally armed with a
6 firearm, is a principal in the commission of an offense or
7 attempted offense specified in subdivision (c), shall be punished
8 by an additional and consecutive term of imprisonment in the
9 state prison for one, two, or three years.

10 (e) For purposes of imposing an enhancement under Section
11 1170.1, the enhancements under this section shall count as one,
12 single enhancement.

13 (f) Notwithstanding any other provision of law, the court may
14 strike the additional punishment for the enhancements provided
15 in subdivision (c) or (d) in an unusual case where the interests of
16 justice would best be served, if the court specifies on the record
17 and enters into the minutes the circumstances indicating that the
18 interests of justice would best be served by that disposition.

19 SEC. 24. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the
24 penalty for a crime or infraction, within the meaning of Section
25 17556 of the Government Code, or changes the definition of a
26 crime within the meaning of Section 6 of Article XIII B of the
27 California Constitution.